The question of right to enlarge by application of the doctrine of equivalents the claims of the patent to include and monopolize structures neither shown, described nor claimed in the patent;

The question of right to enlarge without reissue the plain, explicit and unambiguous claims which define the exclusive right by application of the doctrine of equivalents to include a different and prior structure possessed by the patentee and which was neither shown, described nor claimed in the patent, and which the patentee knowingly omitted from his application for patent, and to use and rely upon that different prior structure as a standard with which to compare the structures alleged to infringe and subject them to the patent which neither describes, suggests nor claims them;

The question of right to resort to the doctrine of equivalents to enlarge and to recapture scope and breadth of monopoly included in a claim for invention which the Patent Office rejected and with which rejection the patentee agreed and abandoned the claim;

The question of right to resort to the doctrine of equivalents to enlarge and monopolize an obvious aggregation of elements conceded to be old in the prior art and which are neither suggested, described or claimed in the patent.

And, against any contention of fraud, piracy, stealing or malevolence, we assert that no such charge has been made in the pleadings by respondent or evidence given during the trial of the cause.

We respectfully urge that our Petition for Rehearing be granted, and our Petition for Certiorari be allowed.

ARTHUR W. DICKEY,
Counsel for Petitioner.

CERTIFICATE OF COUNSEL FOR PETITIONER

The undersigned counsel for Petitioner hereby certifies that the foregoing Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the substantial grounds specified herein available to the Petitioner which were not previously presented. Counsel further certifies that in his considered opinion and judgment, resulting from twenty-five years of continuous practice of the law respecting patents and the rights granted thereby, and the continuous and almost daily necessity of advising clients with respect either to the rights which they have secured under patents or with respect to the rights others have secured under patents and which they desire not to infringe, that since the decisions referred to in the foregoing Petition for Rehearing the state of the law respecting the applicaton of the doctrine of equivalents and the reliance that can be placed upon definitions of exclusive rights contained in the claims of patents required by the statute, is now so confused and uncertain that it is virtually impossble to advise clients with any reasonable certainty what the Courts may hold any given patent to cover and include within the exclusive rights granted thereby, what the patent owner may reasonably expect to restrain, enjoin and recover for as an infringemet of his patent, or what practices may reasonably be expected not to be subject to liability for infringement of a patent.

Counsel further certifies that it is his considered opinon and belief from long experience in litigation respecting the rights under patents that the uncertainty in the application of the doctrine of equivalents climaxed by the decisions referred to in the foregoing Petition for Rehearing will substantially retard development of improvements parallel

to patented inventions, will substantially increase litigation over the most questionable and unjustified claims of infringement, and will promote laxity in the drafting of applications for patent and in the formulation of particular and distinct claims to define the exclusive rights sought for patents.

Counsel further certifies that in his considered opinion and belief there is an immediate and paramount public need for settling and clarifying the law respecting the application of the doctrine of equivalents.

ARTHUR W. DICKEY,
Counsel for Petitioner.